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IN THE SUPERIOR COURT OF STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

v.

STEVEN CARROLL DEMOCKER,

Defendant.

Cause No. P1300CR20081339

Division 6

STATE'S RESPONSE TO DEFENDANT'S  
MOTION IN LIMINE TO PRECLUDE  
STATE FROM CALLING DEFENSE  
EXPERT PETER BARNETT AS A  
PROSECUTION WITNESS

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned, hereby submits its Response to Defendant's Motion in Limine to Preclude State from Calling Defense Expert Peter Barnett as a Prosecution Witness. The Motion should be denied because Defendant waived any privilege he may have had after he provided the State with copies of the documents Mr. Barnett prepared and allowed the State to interview him.

Defendant identified Mr. Barnett as a testifying expert and assisted in setting up his interview by the State, which was held on April 26, 2010. Before the interview, John Sears stated that Mr. Barnett was originally retained to consult on physical evidence, shoeprint evidence and tire track evidence, and would testify concerning blood spatter evidence. The

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1 State was not allowed to question him regarding any observations or conclusions relating to  
2 shoeprint or tire track evidence.

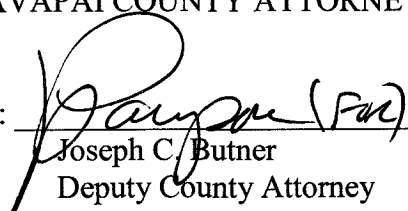
3 Mr. Barnett stated that he would be testifying at trial about blood spatter evidence. The  
4 State interviewed him regarding his investigation, opinions and conclusions concerning that  
5 evidence. The diagrams he prepared in conjunction with his blood spatter investigation had  
6 been disclosed to the State three days before the interview, on April 23, 2010.

7  
8 If any privilege existed concerning Mr. Barnett's diagrams and testimony, it was  
9 waived by Defendant allowing the State to interview him and providing the diagrams. "The  
10 work product doctrine is not absolute. Like any qualified privilege, a defendant may waive all  
11 or part of the protection...." *State v. Ybarra*, 161 Ariz. 188, 193, 777 P.2d 686, 691 (1989).  
12 *See also Austin v. Alfred*, 163 Ariz. 397, 788 P.2d 130 (App. 1990) (protection afforded by  
13 work product principle or attorney-client privilege for all non-testifying mental health  
14 professionals retained by a defendant was subject to waiver).  
15

16 Defendant waived any work product or attorney-client privilege. The State should be  
17 permitted to call Mr. Barnett as an expert witness in its case in chief.  
18

19 RESPECTFULLY SUBMITTED this <sup>21<sup>st</sup></sup>~~20<sup>th</sup>~~ day of May, 2010.

20  
21 Sheila Sullivan Polk  
YAVAPAI COUNTY ATTORNEY

22  
23 By:  (FAR)  
24 Joseph C. Butner  
Deputy County Attorney  
25  
26

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COPIES of the foregoing delivered this  
20th day of May, 2010, to:

Honorable Thomas J. Lindberg  
Division 6  
Yavapai County Superior Court

John Sears  
107 North Cortez Street, Suite 104  
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Attorney for Defendant

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Attorney for Defendant

By: 